

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHADRICK M. MORGAN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 13-CV-3132-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 13 and 14). Joseph M. Linehan represents Plaintiff. Jeffrey E. Staples represents Defendant. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g); 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s  
13 impairment must be “of such severity that he is not only unable to do his previous  
14 work[,] but cannot, considering his age, education, and work experience, engage in  
15 any other kind of substantial gainful work which exists in the national economy.”  
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner  
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);  
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to  
13 several impairments recognized by the Commissioner to be so severe as to  
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§  
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more  
16 severe than one of the enumerated impairments, the Commissioner must find the  
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity  
19 of the enumerated impairments, the Commissioner must pause to assess the  
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§  
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the  
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);  
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the  
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the  
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing other work in the national economy.  
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,  
15 the Commissioner must also consider vocational factors such as the claimant's age,  
16 education and work experience. *Id.* If the claimant is capable of adjusting to other  
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other  
19 work, the analysis concludes with a finding that the claimant is disabled and is  
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.  
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
3 the analysis proceeds to step five, the burden shifts to the Commissioner to  
4 establish that (1) the claimant is capable of performing other work; and (2) such  
5 work “exists in significant numbers in the national economy.” 20 C.F.R. §§  
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 7 **ALJ’S FINDINGS**

8 Plaintiff applied for disability insurance benefits and supplemental security  
9 income disability benefits on July 16, 2010, alleging a disability onset date of  
10 March 1, 2008. Tr. 138-41, 142-47. His claims were denied initially and upon  
11 reconsideration. Tr. 85-88, 92-96, 97-103. Plaintiff appeared for a hearing before  
12 an administrative law judge (“ALJ”) on March 13, 2012. Tr. 43-78. The ALJ  
13 issued a decision denying Plaintiff benefits on March 26, 2012. Tr. 25-41.

14 The ALJ found that Plaintiff met the insured status requirements of Title II  
15 of the Social Security Act through September 30, 2012. Tr. 30. At step one, the  
16 ALJ found that Plaintiff had not engaged in substantial gainful activity since  
17 March 1, 2008, the alleged onset date. *Id.* At step two, the ALJ found that  
18 Plaintiff had the following severe impairments: cannabis, alcohol, and  
19 amphetamine dependence in remission; lumbar degenerative disc disease at L5-S1  
20 with mild disc protrusion and lateral recess stenosis; asthma; and angulated

1 ununited fifth finger boxer's fracture. *Id.* at 30-31. At step three, the ALJ found  
2 that Plaintiff's severe impairments did not meet or medically equal a listed  
3 impairment. *Id.* at 31-32. The ALJ then determined that Plaintiff had the residual  
4 functional capacity to

5 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b).  
6 The claimant has the ability to occasionally lift and/or carry up to 20  
7 pounds, and frequently lift and/or carry up to 10 pounds. The claimant  
8 also has the ability to stand and/or walk (with normal breaks) for a  
9 total of about 6 hours in an 8-hour workday. The claimant's ability to  
10 push and/or pull is unlimited, other than as shown for lift and/or carry.  
11 The claimant further has the ability to frequently climb ramps or stairs  
12 and balance, but can only occasionally stoop, kneel, crouch, crawl,  
13 and climb ladders, ropes, or scaffolds. The claimant also is limited to  
14 occasional overhead reaching with his upper left extremity, and the  
15 claimant should avoid concentrated exposure to irritants such as  
16 fumes, odors, dust, gases, and poor ventilated areas.

17 *Id.* at 32-33. At step four, the ALJ found that Plaintiff was capable of performing  
18 past relevant work as a welder. *Id.* at 35. Nevertheless, the ALJ alternatively  
19 continued to step five. At step five, after considering the Plaintiff's age, education,  
20 work experience, and residual functional capacity, the ALJ found Plaintiff could  
perform other work existing in significant numbers in the national economy, such  
as ticket seller, cashier II, and office helper. *Id.* at 36. Thus, the ALJ concluded  
that Plaintiff was not disabled under the Social Security Act and denied his claims  
on that basis. *Id.* at 37.

On April 10, 2012, Plaintiff requested review of the ALJ's decision by the  
Appeals Council. *Id.* at 22. The Appeals Council denied Plaintiff's request for

1 review on October 17, 2013, *id.* at 1-5, making the ALJ's decision the  
2 Commissioner's final decision for purposes of judicial review. 20 C.F.R. §§  
3 404.981, 416.1484, and 422.210.

#### 4 **ISSUES**

5 Plaintiff seeks judicial review of the Commissioner's final decision denying  
6 him disability insurance benefits and supplemental security income disability  
7 benefits under Title II and Title XVI of the Social Security Act. Plaintiff's sole  
8 challenge is whether the ALJ erred in assessing his credibility. ECF No. 13 at 9.

#### 9 **DISCUSSION**

10 In social security proceedings, a claimant must prove the existence of  
11 physical or mental impairment with "medical evidence consisting of signs,  
12 symptoms, and laboratory findings." 20 C.F.R. §§ 416.908; 416.927. A  
13 claimant's statements about his or her symptoms alone will not suffice. 20 C.F.R.  
14 §§ 416.908; 416.927. Once an impairment has been proven to exist, the claimant  
15 need not offer further medical evidence to substantiate the alleged severity of his or  
16 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).  
17 As long as the impairment "could reasonably be expected to produce [the]  
18 symptoms," the claimant may offer a subjective evaluation as to the severity of the  
19 impairment. *Id.* This rule recognizes that the severity of a claimant's symptoms  
20



1 “cannot be objectively verified or measured.” *Id.* at 347 (quotation and citation  
2 omitted).

3 If an ALJ finds the claimant’s subjective assessment unreliable, “the ALJ  
4 must make a credibility determination with findings sufficiently specific to permit  
5 [a reviewing] court to conclude that the ALJ did not arbitrarily discredit claimant’s  
6 testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). In making  
7 this determination, the ALJ may consider, *inter alia*: (1) the claimant’s reputation  
8 for truthfulness; (2) inconsistencies in the claimant’s testimony or between his  
9 testimony and his conduct; (3) the claimant’s daily living activities; (4) the  
10 claimant’s work record; and (5) testimony from physicians or third parties  
11 concerning the nature, severity, and effect of the claimant’s condition. *Id.* If there  
12 is no evidence of malingering, the ALJ’s reasons for discrediting the claimant’s  
13 testimony must be “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d  
14 661, 672 (9th Cir. 2012) (quotation and citation omitted). The ALJ “must  
15 specifically identify the testimony she or he finds not to be credible and must  
16 explain what evidence undermines the testimony.” *Holohan v. Massanari*, 246  
17 F.3d 1195, 1208 (9th Cir. 2001).

18 Plaintiff contends that the ALJ improperly discredited his credibility. ECF  
19 No. 13 at 9-12. Specifically, Plaintiff challenges the ALJ’s rejection of his  
20

1 testimony regarding his limited ability to sit, stand, walk, lift, carry, and use his left  
2 hand. *Id.* at 11.

3 This Court finds that the ALJ provided the following specific, clear, and  
4 convincing reasons supported by substantial evidence for finding Plaintiff's  
5 statements not credible: (1) Plaintiff's statements were inconsistent with the  
6 objective medical evidence; (2) Plaintiff failed to seek and comply with  
7 recommended treatment; and (3) Plaintiff's statements were inconsistent with his  
8 daily activities. Tr. 33-34.

9 First, the ALJ found that Plaintiff's statements concerning the severity of his  
10 symptoms and limitations were inconsistent with the objective medical evidence.  
11 *Id.* In support, the ALJ highlighted the following regarding Plaintiff's complaints  
12 regarding his limited ability to sit, stand, walk, lift, or carry: an MRI of his lumbar  
13 spine showed only mild degenerative disc disease, Tr. 33, 281; and physical  
14 examinations showed that Plaintiff "exhibited 5/5 strength in his lower extremities,  
15 negative straight leg raising test, effective ambulation without an assistive device  
16 and no back spasms," Tr. 33-34, 280, 298, 301. These inconsistencies between  
17 Plaintiff's alleged limitations and the objective medical evidence provided a  
18 permissible and legitimate reason for discounting Plaintiff's credibility. *Thomas*,  
19 278 F.3d at 958.

1       Second, the ALJ found that Plaintiff's statements concerning the severity of  
2 his limitations were inconsistent with both his failure to seek treatment and then  
3 fully comply with recommended treatment. Tr. 34. For instance, the ALJ noted  
4 that Plaintiff's medical records were minimal following his release from the Idaho  
5 State Correctional Facility, suggesting that Plaintiff did not feel his condition was  
6 severe enough to seek treatment. Tr. 33. Further, the ALJ noted that Plaintiff  
7 missed multiple physical therapy appointments, recommended by Dr. Shanks to  
8 treat Plaintiff's condition, which suggested that Plaintiff's condition was not as  
9 severe as alleged. *Id.* at 34, 323. These inconsistencies between Plaintiff's alleged  
10 limitations and both his failure to seek treatment and then comply with  
11 recommended treatment provided a permissible and legitimate reason for  
12 discounting Plaintiff's credibility. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th  
13 Cir. 2008) (finding that a plaintiff's "unexplained or inadequately explained failure  
14 to seek treatment or to follow a prescribed course of treatment" provided legitimate  
15 reason for rejecting claimant's credibility) (citation omitted).

16       Finally, the ALJ found Plaintiff's description of his daily activities  
17 inconsistent with the disabling limitations alleged. Tr. 23. Although Plaintiff  
18 alleged symptoms that affected his ability to lift, squat, bend, stand, reach, sit,  
19 kneel, walk, climb stairs, and use his hands, Plaintiff reported that he engaged in  
20 most household and yard work, gets outside as frequently as possible, uses public

1 transportation, drives, and could lift approximately twenty pounds. Tr. 34, 185-89.  
2 These inconsistencies between Plaintiff's alleged disabling limitations and his  
3 reported daily activities provided a permissible and legitimate reason for  
4 discounting Plaintiff's credibility. *Thomas*, 278 F.3d at 958-59; *see also Orn v.*  
5 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (finding that daily activities may be  
6 relevant to an adverse credibility finding either because they contradict a  
7 claimant's testimony or demonstrate abilities and skills that can easily transfer to a  
8 workplace setting).

9 Accordingly, this Court concludes that the ALJ did not err in discounting  
10 Plaintiff's credibility and his ultimate non-disability finding is supported by  
11 substantial evidence.

12 **Accordingly, IT IS HEREBY ORDERED:**

- 13 1. Plaintiff's Motion for Summary Judgment (ECF No. 13) is **DENIED**.  
14 2. Defendant's Motion for Summary Judgment (ECF No. 14) is  
15 **GRANTED**.

16 The District Court Executive is hereby directed to enter this Order, enter  
17 **JUDGMENT** for Defendant, provide copies to counsel, and **CLOSE** the file.

18 **DATED** October 29, 2014.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge